

No. 89235

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**In the United States**  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

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TAKACHIHO SHOSEN KABUSHIKI KAISHA,  
LTD. (UNITED OCEAN TRANSPORT CO.),

Claimant and Appellant,

vs.

THE JAPANESE MOTORSHIP "KOYEI MARU,"  
her motors, tackle, apparel and furniture,

Respondent,

WILMINGTON TRANSPORTATION COMPANY,  
a corporation,

Libelant and Appellee.

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**Apostles on Appeal**

Upon Appeal from the District Court of the United States for the  
Southern District of California, Central Division.

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FILED

FEB 25 1938

PAUL P. O'BRIEN,  
CLERK

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No.

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In the United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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TAKACHIHO SHOSEN KABUSHIKI KAISHA,  
LTD. (UNITED OCEAN TRANSPORT CO.),  
Claimant and Appellant,

vs.

THE JAPANESE MOTORSHIP "KOYEI MARU,"  
her motors, tackle, apparel and furniture,  
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a corporation,  
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## INDEX.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original record are printed literally in italics; and, likewise, cancelled matter appearing in the original record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

	PAGE
Appeal, Petition for.....	7
Assignment of Errors.....	9
Bond .....	22
Certificate of Clerk.....	29
Citation .....	2
Clerk's Certificate.....	29
Damages, Stipulation Fixing Amount of.....	3
Decree .....	5
Final Decree .....	5
Names and Addresses of Proctors.....	1
Order Allowing Appeal.....	21
Order, Dated Feb. 9, 1938, as to Contents of Apostles on Appeal	28
Order Approving Bond, Dated Feb. 9, 1938.....	24
Petition for Appeal.....	7
Praeipce .....	26
Stipulation and Order Regarding Record on Appeal and Praeipce for Apostles of Appeal.....	26
Stipulation Fixing Amount of Damages.....	3
Stipulation for Stay of Execution on Release Bond Heretofore Filed and Waiving Additional Supersedeas Bond.....	25



Names and Addresses of Proctors.

For Appellee:

IRA S. LILLICK, Esq.,

JOHN C. McHOSE, Esq.,

LILLICK, McHOSE & ADAMS, Esqs.,

634 South Spring Street,

Los Angeles, California.

For Appellant:

FARNHAM P. GRIFFITHS, Esq.,

HAROLD A. BLACK, Esq.,

McCUTCHEM, OLNEY, MANNON &  
GREENE, Esqs.,

727 West Seventh Street,

Los Angeles, California.

## CITATION

UNITED STATES OF AMERICA ) SS

To WILMINGTON TRANSPORTATION COMPANY, a corporation, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit at the City of San Francisco, State of California, on the 11th day of March, 1938, pursuant to an order allowing appeal filed on February 9, 1938, in the Clerk's office of the District Court of the United States in and for the Southern District of California, Central Division, in that certain cause No. 6771-C wherein Takachiho Shosen Kabushiki Kaisha, Ltd. (United Ocean Transport Co.) is appellant and you are appellee, to show cause, if any there be, why the order, judgment and decree in the said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable George Cosgrave, United States District Judge for the Southern District of California, this 9th day of February, 1938, and in the one hundred sixty second year of the independence of the United States of America.

Geo Cosgrave

United States District Judge for the Southern District of California.

Service of a copy of the foregoing citation is acknowledged this 9th day of February, 1938.

Ira S. Lillick

John C. McHose

Lillick McHose & Adams

Proctors for Appellee.

[Endorsed]: Filed Feb. 9, 1938 R. S. Zimmerman  
Clerk By Edmund L. Smith, Deputy Clerk



IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

WILMINGTON TRANSPOR-	)	
TATION COMPANY, a cor-	)	
poration,	)	
	)	Libelant,
	)	
vs.	)	
	)	
THE JAPANESE MOTOR-	)	IN ADMIRALTY
SHIP "KOYEI MARU", her	)	No. 6771-C
motors, tackle, apparel and fur-	)	
niture,	)	
	)	Respondent,
	)	
TAKACHIHO SHOSEN KA-	)	
BUSHIKI KAISHA LTD.	)	
(United Ocean Transport Co.),	)	
	)	
	)	Claimant.
_____	)	

STIPULATION FIXING AMOUNT OF DAMAGES

WHEREAS, an interlocutory decree was entered here-  
in June 4, 1936, ordering that libelant, WILMINGTON  
TRANSPORTATION COMPANY, recover of and  
from respondent, the Japanese Motor Ship "KOYEI  
MARU", her motors, tackle, apparel and furniture, and  
from claimant, Takachiho Shosen Kabushiki Kaisha, Ltd.,  
a corporation, all damages sustained by Wilmington  
Transportation Company, individually and as bailee in  
charge of the scow "PIONEER NO. 11," belonging to

Puget Sound Bridge & Dredging Company, a corporation, by reason of the matters and things alleged in the libel herein, including damage to the towline, damage for loss of use, for depreciation, for cost of repairs to the scow and other proper damages, with interest and costs of suit, and

WHEREAS, the parties hereto in lieu of having a reference to ascertain and compute the amount due libelant in the premises have agreed upon the amount of such damage,

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED that the damages sustained by said Wilmington Transportation Company, individually and as bailee in charge of the scow PIONEER NO. 11, as aforesaid, may be and the same are fixed in the amount of TWO THOUSAND SIX HUNDRED AND SIX AND 02/100 (2,606.02) DOLLARS with interest thereon at seven percent (7%) per annum from January 24, 1938, until paid.

DATED January 21, 1938.

Lillick McHose & Adams

John C. McHose

Proctors for Libelant, Wilmington Transportation Company.

McCutchen, Olney, Mannon & Greene  
by Harold A. Black

Proctors for Respondent and Claimant.

[Endorsed]: Filed Feb. 2, 1938. R. S. Zimmerman,  
Clerk By Francis E. Cross, Deputy Clerk.

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
CENTRAL DIVISION

WILMINGTON TRANSPORTATION COMPANY, a corporation,	)	
	)	
Libelant,	)	
-vs-	)	
	)	
THE JAPANESE MOTORSHIP "KOYEI MARU," her motors, tackle, apparel and furniture,	)	In Admiralty No. 6771-C
	)	
Respondent,	)	FINAL DECREE
	)	
TAKACHIHO SHOSEN KABUSHIKI KAISHA, LTD. (United Ocean Transport Co.),	)	
	)	
Claimant.	)	
_____	)	

This case having been heard on the pleadings and proofs adduced by the respective parties and having been duly argued, and the Court having filed its Interlocutory Decree directing that Libelant recover from Respondent and Claimant all damages sustained by reason of the matters and things alleged in the libel, and an order of reference having been made to ascertain Libelant's damages and the damages sustained by Libelant having been fixed by stipulation in the sum of \$2,606.02 with interest thereon at 7% per annum, and the costs of Libelant having been taxed at the sum of \$149.62, now, on motion of Lillick, McHose & Adams, and John C. McHose, Proctors for Libelant, it is

ORDERED, ADJUDGED AND DECREED, that Libelant, Wilmington Transportation Company, a corporation, recover of and from Respondent, the Japanese Motorship "KOYEI MARU", her motors, tackle, apparel and furniture, and from Claimant, Takashiho Shosen Kabushiki Kaisha, Ltd., a corporation, the sum of \$2,606.02, the amount of the damages sustained by the Libelant as stipulated, together with interest thereon, together with the sum of \$149.62, costs of Libelant as taxed, amounting in all to the sum of \$2,755.64, with interest on said total sum at the rate of 7% per annum from the date of this decree until paid; and it is further

ORDERED, ADJUDGED AND DECREED that unless this decree be satisfied or an appeal taken therefrom within ten days after the service of a copy of this decree upon Proctors for Respondent and Claimant, the Libelants have execution against Respondent and Claimant and their stipulators, their goods, chattels and lands, forthwith, to satisfy this decree.

Dated: Los Angeles, California, February 2, 1938.

Geo. Cosgrave

U. S. District Judge.

Approved as to form as provided in Rule 44.

McCutchen, Olney, Mannon & Greene

By Harold A. Black

Proctors for Respondent and Claimant.

Decree entered and recorded 2/2/38

R. S. Zimmerman, Clerk

By Francis E. Cross, Deputy Clerk.

[Endorsed]: Filed Feb. 2, 1938 R. S. Zimmerman,  
Clerk By Francis E. Cross, Deputy Clerk.

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

WILMINGTON TRANSPOR- )  
TATION COMPANY, a cor- )  
poration, )

Libelant, )

v. )

THE JAPANESE MOTOR- )  
SHIP "KOYEI MARU," her )  
motors, tackle, apparel and fur- )  
niture, )

Respondent, )

TAKACHIHO SHOSEN KA- )  
BUSHIKI KAISHA, LTD. )  
(United Ocean Transport Co.), )

Claimant. )

IN ADMIRALTY  
No. 6771-C

PETITION FOR APPEAL

TO THE HONORABLE GEORGE COSGRAVE,  
JUDGE OF THE UNITED STATES DISTRICT  
COURT, SOUTHERN DISTRICT OF CALI-  
FORNIA, CENTRAL DIVISION:

TAKACHIHO SHOSEN KABUSHIKI KAISHA,  
LTD. (United Ocean Transport Co.) your petitioner,  
claimant herein, prays that it may be permitted to take  
an appeal from the final decree entered in the above cause



on the 2nd day of February, 1938, to the United States Circuit Court of Appeals for the Ninth Circuit for the reasons specified in the Assignment of Errors which is filed herewith.

And your petitioner desires that said appeal shall operate as a supersedeas and therefore prays that an order be made staying the execution of said final decree pending the final determination of the appeal therefrom without requirement on the part of your petitioner to file a supersedeas bond, or other security, pursuant to a stipulation between the parties that the stipulation and bond heretofore given for the release of the respondent motorship KOYEI MARU may serve as sufficient security pending this appeal.

Your petitioner also desires that the bond for costs on appeal filed herewith be approved by this Court.

Dated at Los Angeles, California, February 9, 1938.

Farnham P. Griffiths  
(Farnham P. Griffiths)

Harold A. Black  
(Harold A. Black)

McCutchen, Olney, Mannon & Greene  
(McCutchen, Olney, Mannon & Greene)

Proctors for Petitioner.

[Endorsed]: Filed Feb. 9, 1938 R. S. Zimmerman  
Clerk. By Edmund L. Smith, Deputy Clerk

[TITLE OF DISTRICT COURT AND CAUSE.]

## ASSIGNMENT OF ERRORS

Now comes TAKACHIHO SHOSEN KABUSHIKI KAISHA, LTD., (United Ocean Transport Co.), Appellant herein and hereby assigns the following errors in the above entitled proceeding:

### I.

The District Court erred in finding that the collision involved in this litigation occurred between one-half mile and three-quarters of a mile from the lighthouse and light at the end of the San Pedro Breakwater and in not finding that said collision occurred less than one-half mile from said lighthouse and light.

### II.

The District Court erred in finding that prior to the collision, the tug DAVID P. FLEMING and her tows had straightened out on a course approximately south and that the said DAVID P. FLEMING and her tows had for several minutes or for any time prior to said collision proceeded on said course.

### III.

The District Court erred in finding that Captain Jorgenson prior to leaving the bridge of the KOYEI MARU, or at any time, saw lights ahead which he recognized to be the lights of a tug and tow.

### IV.

The District Court erred in finding that the green light on the first scow in tow of the tug DAVID P. FLEMING was observable to or that it should have been seen by those on the KOYEI MARU.

## V.

The District Court erred in finding that at any time the DAVID P. FLEMING sounded any warning or danger signal to the KOYEI MARU and in finding that the whistle on the DAVID P. FLEMING was in good order and functioned properly and that any warning or danger signal should have been heard by those on the KOYEI MARU and in finding that those on the KOYEI MARU either were not paying attention or failed to heed any warning or danger signal.

## VI.

The District Court erred in finding that at approximately 2:04 Captain Watanabe should have observed that the lights appearing to him to be white lights were, in fact, the green side lights on the second and third scows in tow of the tug DAVID P. FLEMING.

## VII.

The District Court erred in finding that the one blast of the whistle blown by the KOYEI MARU at approximately 2:04 was blown at approximately the same time as a warning or danger signal from the DAVID P. FLEMING and in finding that the reason said signal was not heard by the DAVID P. FLEMING was possibly because the said warning or danger signal and the said one blast signal were blown at the same time.

## VIII.

The District Court erred in finding that at approximately 2:06 A. M., Third Officer Takahashi on the KOYEI MARU observed two separate green lights ahead of the KOYEI MARU and in finding that said lights



indicated vessels in tow heading directly towards the course of the KOYEI MARU and in finding that said Takahashi then knew there was a tow ahead.

#### IX.

The District Court erred in finding that, after the collision, the KOYEI MARU had sufficient forward momentum to carry her across the course of and to the south-east of the scow PIONEER NO. 11.

#### X.

The District Court erred in finding that the amount of anchor chain put out by the KOYEI MARU was insufficient and in finding that the depth of water at the point of collision approximated sixty feet or any figure in excess of approximately fifty feet.

#### XI.

The District Court erred in finding that the DAVID P. FLEMING was in all or any respects seaworthy or properly equipped, supplied and manned by proper and competent officers and crew; that the DAVID P. FLEMING and her tow were well and carefully navigated; that they had proper, competent or any lookouts and in finding that said tugboat was maintaining proper or efficient electric lights.

#### XII.

The District Court erred in finding that each of the three scows had proper and efficient marine lights burning thereon and in not finding that the first of the three scows in tow was either without lights or was carrying dim lights which could not be seen more than a short distance away, and that the lights on the other two scows were not of the required brilliance.

## XIII.

The District Court erred in finding that at 2:04 A. M. Captain Watanabe was negligent, careless or reckless in that he failed to stop his engines or put his engines astern or for any other reason.

## XIV.

The District Court erred in finding that at 2:04 A. M. Captain Watanabe and those in charge of the KOYEI MARU were negligent, careless or reckless in that they failed to identify lights and that said lights were plainly observable ahead of them and that they should have identified said lights as the lights of a tug and tow or that they or any of them were negligent for any other reason.

## XV.

The District Court erred in finding that from 2:06 A. M. to 2:09 A. M. the KOYEI MARU traveled approximately 1200 feet, or any distance in excess of 1050 feet and in finding that the average speed of said vessel during said period was approximately four knots or any speed in excess of three and one-half knots.

## XVI.

The District Court erred in finding that it was unnecessary, dangerous or negligent for the KOYEI MARU to follow the course she took prior to the collision.

## XVII.

The District Court erred in finding that Wilmington Transportation Company and the tugboat DAVID P. FLEMING committed no fault or negligence which caused or contributed to the collision and in finding that the said collision and the damage sustained by the scow

PIONEER NO. 11 and the breaking of the tow line were due to the carelessness, negligence or recklessness of the KOYEI MARU or her officers and crew; and in not finding that said collision was solely due to the fault of Wilmington Transportation Company and the tugboat DAVID P. FLEMING.

The District Court further erred in finding that the KOYEI MARU and her officers and crew were careless, negligent or reckless in any respect.

#### XVIII.

The District Court erred in inferentially finding that the KOYEI MARU was charged with any knowledge or notice by anything observable by it that it was an overtaking vessel with respect to the tug DAVID P. FLEMING and her tow.

#### XIX.

The District Court erred in finding that the KOYEI MARU did not have on watch a proper and competent lookout, properly stationed attending to his duties; and in further finding that the Chief Officer on said KOYEI MARU was not devoting his attention solely or exclusively to the duties of lookout and in further finding that he could have or should have seen the lights on the scows prior to approximately 2:06 A. M. or in time to warn Captain Watanabe or to avoid the collision.

#### XX.

The District Court erred in finding that the KOYEI MARU failed to reduce her speed prior to the collision.

#### XXI.

The District Court erred in finding that the KOYEI MARU failed to hear or heed the warning or danger

signals sounded by the DAVID P. FLEMING and in finding that those on the KOYEI MARU should have known that there was danger in proceeding on her course for at least two minutes prior to the time when said KOYEI MARU reversed her engines.

## XXII.

The District Court erred in finding that the KOYEI MARU was negligent in failing to stop and reverse her engines at 2:04 A. M.

## XXIII.

The District Court erred in finding that the improper masthead light and towing lights on the DAVID P. FLEMING had nothing to do with the collision; that they were at no time visible to those on the KOYEI MARU and that they could not have misled or influenced the navigation of the KOYEI MARU, or caused or contributed to the collision; and in finding that the fact that the range light on the DAVID P. FLEMING showed all around the horizon did not contribute to the collision and in finding that said light was, in fact, a benefit to the KOYEI MARU for any reason and in not finding that said improper range light caused or contributed to said collision.

## XXIV.

The District Court erred in finding that the KOYEI MARU was not and that it could not have been misled by the white lights observable on the DAVID P. FLEMING at or about 2:06 A. M.; in finding that Captain Watanabe did not see a green light on the DAVID P. FLEMING and that said light could not have been seen by those on the KOYEI MARU; in finding that the white lights

showing on the DAVID P. FLEMING did not resemble the lights of a vessel with a tow and in finding that even if the KOYEI MARU had been misled that fact could not have caused or in any way contributed to the collision.

The District Court erred in not finding that at or about 2:06 A. M., the white lights observable on the DAVID P. FLEMING closely resembled towing lights and that at or about said time Captain Watanabe saw the green light on the DAVID P. FLEMING and that he was thereby misled into thinking he had safely gone under the stern of a tow of not more than one vessel and refrained from taking action on that account which otherwise would have presented the collision.

#### XXV.

The District Court erred in finding that at 2:06 A. M., it was too late for the KOYEI MARU to avoid crossing the tow and that collision was then unavoidable and in not finding that if the DAVID P. FLEMING had been carrying proper lights the collision would probably have been avoided.

#### XXVI.

The District Court erred in finding that the owners and those in charge of the KOYEI MARU were negligent in that they could have known or ascertained or been advised by their agents that tugs were engaged in towing rock scows from Long Beach Breakwater to Catalina Island and return or that they were negligent for any other reason and in finding that the KOYEI MARU should have been on the lookout for a tug of the character of the DAVID P. FLEMING and they could have identified it by the lights observable on the scows.



## XXVII.

The District Court erred in finding that the DAVID P. FLEMING took all reasonable and proper precautions under the circumstances to avoid the collision and not finding that the DAVID P. FLEMING should have taken other precautions than she, in fact, took such as posting attendants on the scows, turning her searchlight on at an earlier time and fixing more efficient lights on the scows, particularly on the first scow.

## XXVIII.

The District Court erred in finding that it is not true that the DAVID P. FLEMING did not have on watch proper or competent officers attentive to their duties.

## XXIX.

The District Court erred in finding that it is not true that the DAVID P. FLEMING was careless or negligent in that it did not station competent or capable look-outs on any of the said scows in tow and in finding that it would have been impractical or a danger practice to station a lookout or barge-man on rock scows being towed from Long Beach Breakwater to Catalina Island and in finding that it was unnecessary to station lookouts on the scows.

## XXX.

The District Court erred in finding that it is not true that the DAVID P. FLEMING negligently permitted lights from her house to be visible which tended to obscure her running lights and white lights.

## XXXI.

The District Court erred in finding that it is not true that the DAVID P. FLEMING did not cause proper and

efficient lights to be fixed on the scows or that the lights on said scows were not properly screened or were not properly trimmed or were not of sufficient brilliance and in finding that each of said scows was properly lighted by lights properly screened, properly trimmed and of sufficient brilliance.

### XXXII.

The District Court erred in finding that it is not true that the scow P. S. B. & D. CO. NO. 13 was either without lights or had lights so dim that they were not visible beyond a few feet and in finding that the lights on said scow were plainly visible and that they complied in all respects with the regulations applicable in the circumstances.

### XXXIII.

The District Court erred in finding that it is not true that the DAVID P. FLEMING had an unnecessarily long tow in her charge; and in finding that it is not true that the DAVID P. FLEMING negligently and improperly navigated in close proximity to the entrance to Los Angeles Harbor without any necessity therefor.

### XXXIV.

The District Court erred in finding that the collision and the resultant damage to the PIONEER NO 11, the tow line, the KOYEI MARU and the cargo on the KOYEI MARU were due to sole fault on the part of

the KOYEI MARU and in not finding that the said collision and the resultant damage aforesaid were due solely to the fault of Wilmington Transportation Company and the tug DAVID P. FLEMING.

## XXXV.

The District Court erred in concluding that Wilmington Transportation Company committed no fault or negligence in the premises.

## XXXVI.

The District Court erred in concluding that the KOYEI MARU violated the rules of navigation and was negligent in that being an overtaking vessel she failed to keep out of the way of the tug and her tow and failed to stop and reverse her engine in time to prevent and avoid collision and in not concluding that the said KOYEI MARU was not charged with notice or warning that she was an overtaking vessel with respect to the tug and tow.

## XXXVII.

The District Court erred in concluding that the KOYEI MARU violated the rules of navigation and was negligent in that she failed to stop and reverse when she saw the line at 2:04 A. M.

## XXXVIII.

The District Court erred in concluding that the KOYEI MARU was negligent in that she failed to observe the green lights on the three scows and failed to ascertain the presence of the scows until too late to avoid collision.



## XXXIX.

The District Court erred in concluding that the KOYEI MARU was negligent in that she failed to heed the danger signal blown by the tug DAVID P. FLEMING and failed to stop or reverse at or about 2:04 A. M., and was further negligent in that she failed to heed the danger signal blown by the tug DAVID P. FLEMING and failed to stop and reverse at or about 2:05 A. M.

## XL.

The District Court erred in concluding that the KOYEI MARU was negligent in that she failed and neglected to keep a proper lookout.

## XLI.

The District Court erred in concluding that the KOYEI MARU was negligent in that she failed and neglected to take precautions required by the ordinary practice of seamen and by the special circumstances in the premises.

## XLII.

The District Court erred in concluding that the negligence, carelessness and recklessness of the KOYEI MARU were the sole and proximate causes of the collision and in concluding that the KOYEI MARU was guilty of any negligence, carelessness or recklessness.

## XLIII.

The District Court erred in concluding that libellant Wilmington Transportation Company was entitled to a decree against respondent motorship KOYEI MARU

and against Takachiho Shosen Kabushiki Kaisha, Ltd. (United Ocean Transport Co.) in the amount of TWO THOUSAND SIX HUNDRED SIX and 02/100 (2,606.02) DOLLARS, or in any amount, together with costs in the amount of ONE HUNDRED FORTY NINE and 62/100 (149.62) DOLLARS, or any sum.

XLIV.

The District Court erred in not directing that the libel of Wilmington Transportation Company against the Japanese Motorship KOYEI MARU should be dismissed with costs to said respondent and to claimant Takachiho Shosen Kabushiki Kaisha, Ltd. (United Ocean Transport Co.)

Farnham P. Griffiths  
(Farnham P. Griffiths)

Harold A. Black  
(Harold A. Black)

McCutchen, Olney, Mannon & Greene  
(McCutchen, Olney, Mannon & Greene)

Proctors for Claimant and Appellant, Takachiho Shosen  
Kabushiki Kaisha Ltd. (United Ocean Transport  
Co.)

[Endorsed]: Service of the within assignment of errors and receipt of a copy is hereby admitted this 8th day of February, 1938. Ira S. Lillick, John C. McHose, Lillick, McHose & Adams. Filed Feb. 9, 1938. R. S. Zimmerman, Clerk; by Edmund L. Smith, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

ORDER ALLOWING APPEAL

The petition of TAKACHIHO SHOSEN KABUSHIKI KAISHA, LTD. (United Ocean Transport Co.) for an appeal from the final decree entered in the above entitled cause on the 2nd day of February, 1938, is hereby granted and the appeal is allowed, and

IT IS FURTHER ORDERED that a certified transcript of the record herein be forthwith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

IT IS FURTHER ORDERED that said appeal shall operate as a supersedeas without requirement on the part of petitioner and appellant to file a supersedeas bond pursuant to a stipulation filed herein.

IT IS FURTHER ORDERED that the bond for costs on appeal filed herein on February 9, 1938, be and the same is hereby approved.

Dated at Los Angeles, California, February 9, 1938.

Geo. Cosgrave  
United States District Judge

[Endorsed]: Filed Feb. 9, 1938. R. S. Zimmerman,  
Clerk; by Edmund L. Smith, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

BOND FOR COSTS ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, Takachiho Shosen Kabushiki Kaisha, Ltd. (United Ocean Transport Co.), claimant herein has appealed or is about to appeal from that certain final decree heretofore made and entered in the above entitled cause on February 2, 1938, and

WHEREAS, UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under and by virtue of the laws of the State of Maryland and authorized to do a surety business in the State of California, is held and firmly bound unto libellant herein and unto whom it may concern in the sum of TWO HUNDRED AND FIFTY (250) DOLLARS, for the payment of which well and truly to be made it does hereby bind itself, its successors and assigns firmly by these presents and agrees that in case of default or contumacy on the part of said appellant or the undersigned, execution may issue against it, its goods, chattels and lands;

NOW, THEREFORE, the condition of this obligation is such that if the above named appellant shall prosecute said appeal with effect and pay all costs which may be awarded against it as such appellant if the appeal is not sustained, then this obligation shall be void; otherwise the same shall be and remain in full force and effect.

Dated: Los Angeles, California, February 8th, 1938.

UNITED STATES FIDELITY AND  
GUARANTY COMPANY

By O. D. Brick

[Seal]

Its Attorney in Fact.



Examined and recommended for approval as provided in Rule 28.

Farnham P. Griffiths  
(Farnham P. Griffiths)

Harold A. Black  
(Harold A. Black)

McCutchen, Olney, Mannon & Greene  
(McCutchen, Olney, Mannon & Greene)

Proctors for Claimant.

I hereby approve the foregoing bond.

Dated February 9, 1938.

Geo. Cosgrave  
United States District Judge.

The surety on and the form of the foregoing bond are hereby approved and notice of filing said bond and of the name and residence of the surety thereon is hereby waived.

Dated February 8th, 1938.

Ira S. Lillick  
John C. McHose  
Lillick, McHose & Adams  
Proctors for Libelant.

[Endorsed]: Filed Feb. 9, 1938. R. S. Zimmerman,  
Clerk; by Edmund L. Smith, Deputy Clerk.



[TITLE OF DISTRICT COURT AND CAUSE.]

STIPULATION FOR STAY OF EXECUTION ON  
RELEASE BOND HERETOFORE FILED AND  
WAIVING ADDITIONAL SUPERSEDEAS  
BOND.

IT IS HEREBY STIPULATED AND AGREED that the stipulation and bond for the release of the motorship KOYEI MARU, her motors, tackle, apparel, furniture, etc., heretofore given herein, in the amount of THREE THOUSAND (3,000) DOLLARS, with United States Fidelity & Guaranty Company as surety thereon, may serve as a supersedeas and that execution of the final decree herein may be stayed pending the final determination of the appeal from said final decree so long as stipulation and bond for release of said vessel remains in full force and effect without the necessity of filing any additional supersedeas bond.

Dated: February 8th, 1938.

Farnham P. Griffiths  
(Farnham P. Griffiths)

Harold A. Black  
(Harold A. Black)

McCutchen, Olney, Mannon & Greene  
(McCutchen, Olney, Mannon & Greene)

Proctors for Claimant and Appellant

Ira S. Lillick

John C. McHose

Lillick, McHose & Adams

Proctors for Libelant and Appellee

[Endorsed]: Filed Feb. 9, 1938. R. S. Zimmerman,  
Clerk; by Edmund L. Smith, Deputy Clerk.

[TITLE OF DISTRICT COURT AND CAUSE.]

STIPULATION AND ORDER REGARDING  
RECORD ON APPEAL AND PRAECIPE  
FOR APOSTLES ON APPEAL.

TO: R. S. Zimmerman, Clerk of the United States District Court, Southern District of California:

WHEREAS, Takachiho Shosen Kabushiki Kaisha, Ltd. (United Ocean Transport Co.), claimant herein, has appealed from that certain final decree heretofore made and entered in the above entitled cause on February 2, 1938, and

WHEREAS, it appears that the pleadings, testimony and exhibits in the proceedings herein have already been placed before the Circuit Court of Appeals for the Ninth Circuit in the appeals now pending in cause No. 8306 in said United States Circuit Court of Appeals from certain decrees in causes consolidated with this cause and that there is no need of again transmitting the same material to said Circuit Court of Appeals on this appeal;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED that the apostles on appeal herein shall consist of the following:

- (1) Stipulation fixing amount of damages.
- (2) Final decree.
- (3) Petition for appeal.



- (4) Order allowing appeal.
- (5) Stipulation for stay of execution on release bond heretofore filed and waiving additional supersedeas bond.
- (6) Bond for costs on appeal.
- (7) Assignment of errors.
- (8) Citation and service thereof.
- (9) This stipulation, order and praecipe.

IT IS FURTHER STIPULATED AND AGREED that the apostles on appeal and the exhibits in cause No. 8306 now pending in the United States Circuit Court of Appeals for the Ninth Circuit may be deemed a part of the record in this appeal to all intents and purposes as if again printed and brought up with the record herein.

IT IS FURTHER STIPULATED that in making up the record herein to be transmitted to the Circuit Court of Appeals for the Ninth Circuit the Clerk of the above entitled court shall omit all formal captions and titles, except the caption upon the stipulation fixing amount of damages and the final decree, substituting therefor: "Title of Court and Cause"; that the Clerk of the above entitled court be and he hereby is requested to prepare and certify

for the Circuit Court of Appeals for the Ninth Circuit  
a record on appeal in accordance with this stipulation.

Ira S. Lillick

John C. McHose

Lillick, McHose & Adams

Proctors for Libelant and Appellee.

Farnham P. Griffiths

(Farnham P. Griffiths)

Harold A. Black

(Harold A. Black)

McCutchen, Olney, Mannon & Greene

(McCutchen, Olney, Mannon & Greene)

Proctors for Claimant and Appellant.

IT IS SO ORDERED this 9th day of February, 1938.

Geo. Cosgrave

United States District Judge.

[Endorsed]: Filed Feb. 10, 1938. R. S. Zimmerman,  
Clerk; by Edmund L. Smith, Deputy Clerk.

[TITLE OF COURT AND CAUSE.]

CLERK'S CERTIFICATE.

I, R. S. Zimmerman, clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 28 pages, numbered from 1 to 28 inclusive, to be the Apostles on Appeal in the above entitled cause, as printed by the appellant, and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the citation and service thereof; stipulation fixing amount of damages; final decree; petition for appeal; assignment of errors; order allowing appeal bond for costs on appeal; stipulation for stay of execution on release bond heretofore filed and waiving additional supersedeas bond, and stipulation and praecipe for apostles on appeal.

I DO FURTHER CERTIFY that the amount paid for printing the foregoing record on appeal is \$                      and that said amount has been paid the printer by the appellant herein and a receipted bill is herewith enclosed, also that the fees of the Clerk for comparing, correcting and certifying the foregoing Apostles on Appeal amount to..... and that said amount has been paid me by the appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District of California, Central Division, this..... day of February, in the year of Our Lord One Thousand Nine Hundred and Thirty-eight and of our Independence the One Hundred and Sixty-second.

R. S. ZIMMERMAN,

Clerk of the District Court of the  
United States of America, in  
and for the Southern District  
of California.

By

Deputy.